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No. 1138

In the Supreme Court of the United States

OCTOBER TERM 1966

BANK OF UTAH, a Utah corporation, and
BANK OF BEN LOMOND, a Utah corporation,

Petitioners,

v.

COMMERCIAL SECURITY BANK,
a Utah corporation,

Respondent.

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Respondent's brief in opposition is based upon a false statement of the basic nature of respondent's contract. Respondent asserts that "there was no requirement that any employee have a checking account with respondent" (Resp. brief p. 8). Obviously there could be no such contractual requirement binding on

the employees as they were not parties to the contract. The uncontested fact is that the contracts do provide that each employee would be paid through a checking account at respondent. Moreover, it is also uncontested that all 1744 regular employees of the two school boards covered by the contracts did, in fact, have checking accounts opened in their names at respondent. (Pl. Ex. 8, R. 368, Pl. Ex. 46, R. 449, Def. Ex. Y, R. 486). Respondent's brief in effect represents to this Court that 60% of the regular school board employees "voluntarily" and simultaneously agreed to open checking accounts at the time the "no check" payroll plan was inaugurated by respondent and their employees. Respondent, in designating their plan, the "no check payroll system" (Pl. Ex. 8, R. 369), intended that no checks be issued to the employees of the employers coming under the plan and in fact no checks were issued. Although respondent maintains that this remarkable unanimity was strictly "voluntary," petitioner produced a hospital employee who testified he was threatened by the loss of his job unless he agreed to open a checking account with respondent for the receipt of his pay (R. 345-348).

In presenting the "no check" plan to the Ogden Board respondent's vice president was asked "whether or not each teacher should be given an opportunity to select his bank. Mr. Baker (respondent's vice president) replied that a wide-spread selection of numerous banks would nullify the major portion of the economy to be realized from the "no check" plan, and that the two free checks feature of the plan presented a freedom of choice to each individual" (Pl. Ex. 7, R. 364).

Respondent did not produce a single employee of either school boards to testify that he ever heard of an optional method of receiving his pay, or a regular school employee who in fact did receive his pay in a manner other than through a checking account with respondent. The reason for the failure to produce such a witness is that none existed. The record is clear that all regular employees of both boards of education, from the Superintendent down to the janitors and bus drivers, regardless of their previous banking habits in a city of four banks, received their pay through a checking account at respondent bank (R. 77, 78, 212).

Petitioner contends that only a most naive person could, in the face of the record in this case, accept respondent's claim that all regular school employees "voluntarily" agreed to open checking accounts with respondent. The analogy of the facts of this case to the facts of *Atlantic Refining v. Federal Trade Commission,* 381 U.S. 357, is startling.

Many financial writers have described coming trends in computerized banking services as the "checkless society". If these predictions are accurate, and there are many indications of their accuracy, then it becomes a matter of the greatest national importance that this court now determine the application of anti-trust principles to these new developments in banking. The issue can be simplified to this: Shall the individual worker remain free to select the bank for the deposit of his earnings; or shall respondent's "no check payroll plan" be approved by this Court and the employer and the employer's banker be permitted to deny the worker this freedom of choice by making the deposit of the

worker's earnings in the employer's bank a condition of his employment? This is an issue of importance to the individual worker and to banks all over the country.

Respectfully submitted,

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